

## **CONGRESS PASSES SERVICEMEMBERS' CIVIL RELIEF ACT**

*Grafenwoehr Law Center*—On 19 December 2003, President Bush signed into law the Servicemembers Civil Relief Act (SCRA), a complete revision of the Soldiers' and Sailors' Civil Relief Act (SSCRA) of 1940. Congress enacted the new SCRA in order to clarify the language of the Soldiers' and Sailors' Civil Relief Act; to bring the statute into line with decades of court cases that interpreted the SSCRA; and to update the SSCRA to reflect the many changes in American life since 1940.

The old SSCRA protected servicemembers in a number of ways. These included delaying court hearings when military service affected servicemembers' ability to defend their interests in court; reducing interest to 6% on pre-service loans and obligations; requiring court action before a servicemember's family could be evicted from rental property for nonpayment of rent; allowing termination of pre-service residential leases; and allowing servicemembers to maintain their state of residence for tax purposes despite military re-assignment to another state.

The newly passed Servicemembers' Civil Relief Act:

- Extends a servicemember's right to delay court proceedings to include administrative hearings. Courts and administrative bodies must grant at least a 90-day stay if requested by the servicemember. Additional delays can be granted at the discretion of the judge or hearing official. The court must appoint counsel to represent the servicemember if the court denies the request for an additional stay.
- Clarifies the rules on the 6% interest rate cap on pre-service loans and obligations by stating that interest in excess of 6% per year must be forgiven. The absence of such language in the old SSCRA led some lenders to argue that interest in excess of 6% is merely deferred. The new law requires the servicemember to request this reduction of interest in writing and to attach a copy of his orders with the request.
- Forbids landlords to evict servicemembers from dwellings for which the monthly rent does not exceed \$2,465 for the year 2004. The law provides a formula for calculating the rent ceiling for subsequent years.
- Gives active-duty servicemembers moving on permanent change of station (PCS) orders or orders for deployment of at least 90 days the right to terminate residential leases. This eliminates the need for servicemembers to request military-termination clauses in leases.
- Adds a provision allowing servicemembers and their dependents to terminate automobile leases. Pre-service automobile leases may be cancelled if the servicemember receives orders to active duty for a period of at least 180 days or more. Automobile leases entered into while the servicemember is on active duty may be terminated if the servicemember receives PCS orders to a location outside the continental United States or deployment orders for a period of 180 days or more.
- Prevents states from increasing the tax bracket of a nonmilitary spouse who earned income in the state by adding in the service member's military income for the purpose of determining the nonmilitary spouse's tax bracket.

- Defines “dependents” under the SCRA to include all persons for whom the servicemember provided more than 50% of their support during the 180 days prior to an application for relief under the SCRA. This is intended to include dependent parents and disabled adult children within the protections of the SCRA.
- Provides that credit-reporting agencies may not note in their records that a person who claims the benefits of the SCRA is a member of the National Guard or a Reserve component.
- Increases the amount of life insurance that qualifies for protection against cancellation for non-payment of premiums under the Act from \$10,000 to \$250,000 (or the maximum of SGLI coverage, whichever is higher).
- Specifically includes property jointly owned by the servicemember and a dependent as being protected against seizure and sale (without a court order) for payment of delinquent taxes (including licenses and fees) and assessments.
- Requires that applications for reinstatement of health-insurance policies be made within 120 days of the servicemember’s release from military service.
- Adds a new provision protecting the non-business assets of a servicemember-businessman (regardless of the form of the business) from seizure if the servicemember is personally liable for the debts of the business.

The former SSCRA applied to members of the National Guard only if they were serving in a Title 10 status. Effective 6 December 2002, the SSCRA protections were extended to members of the National Guard called to active duty for 30 days or more for a contingency mission specified by the President or the Secretary of Defense. This continues under the new SCRA.